

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NICHOLAS LANE,	:	
	:	
Plaintiff,	:	
	:	Case No. 2:20-cv-5492
v.	:	
	:	CHIEF JUDGE ALGENON L. MARBLEY
WARDEN, NOBLE CORRECTIONAL	:	
INSTITUTE, <i>et al.</i>,	:	
	:	Magistrate Judge Kimberly A. Jolson
Defendants.	:	

ORDER GRANTING MOTION TO ALTER OR AMEND JUDGMENT

This matter is before the Court on Plaintiff's Motion (ECF No. 9) to correct an oversight in the Court's previous Order (ECF No. 7) accepting the Magistrate Judge's Report and Recommendation. In that Order, the Court wrote that Plaintiff had failed to exercise his right to object to the Magistrate Judge's Report and Recommendation. Plaintiff states that he in fact did object, and he attaches evidence that the objections were received by the Clerk.

The Court will construe Plaintiff's Motion as seeking to alter or amend the Order per Federal Rule of Civil Procedure 59(e). Plaintiff's Motion is timely, having been filed within 28 days of the Clerk's entry of judgment. To obtain relief, Plaintiff also must show: "(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *Henderson v. Walled Lake Consol. Sch.*, 469 F.3d 479, 496 (6th Cir. 2006).

After reviewing the docket and conferring with the Clerk, it appears that a clerical error prevented Plaintiff's objections from being received by the Court. The document initially labeled as Plaintiff's objections (ECF No. 6) was a misfiled motion from another case. When that

document was caught and removed from the docket, Plaintiff's objections should have been uploaded in its place, but they were not. This gave the appearance that no objections were filed, and the Court relied on that fact in drafting its Order. Plaintiff has a right to have his objections heard, notwithstanding the docketing error. *See* Fed. R. Civ. P. 72(b)(3) ("The district judge must review de novo any part of the magistrate judge's disposition that has been properly objected to.").

Plaintiff has demonstrated "a need to prevent manifest injustice," *see Henderson*, 469 F.3d at 496, insofar as his properly filed objections were not heard by the Court. Therefore, Plaintiff's Motion is **GRANTED**. It is **ORDERED** that Plaintiff's objections shall be docketed promptly and that the case shall be reopened. Once the Court has had opportunity to consider Plaintiff's objections, an Amended Order will issue.

IT IS SO ORDERED.



ALGENON L. MARBLEY
Chief United States District Judge

DATED: September 23, 2021